

ENTERED

October 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JONATHAN BOYD BATES

VS.

LORIE DAVIS, Director, Texas
Department of Criminal Justice,
Correctional Institutions Division.

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MISC. ACTION NO. M-18-829

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's application to proceed *in forma pauperis* and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which petition had been referred to the Magistrate Court for preliminary proceedings. On September 21, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's § 2254 Petition be **DISMISSED** without prejudice, that his application to proceed *in forma pauperis* be **DENIED** as moot, and that a Certificate of Appealability be **DENIED** upon the issuance of this Court's final order.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Petitioner's § 2254 Petition is **DISMISSED** without prejudice, and his application to proceed *in forma pauperis* is **DENIED** as moot. A Certificate of Appealability is **DENIED**.

¹ "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).

SO ORDERED this 26th day of October, 2018, at McAllen, Texas.

A handwritten signature in black ink, reading "Randy Crane". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "a", and the "C" is also large and loops around the "r". The "e" is written with a simple horizontal stroke.

Randy Crane
United States District Judge